

Clinton Refuses the Diet that Voters Ordered

In last year's congressional election, the voters expressed their desire to see the bloated federal government put on a strict diet. The new leadership of Congress has attempted to follow the voters' wishes and has pressed the Clinton Administration to stop the bureaucracy from churning out needless and burdensome new regulations.

The voters' message was obviously lost on President Clinton and his overzealous Commissioner of the Food and Drug Administration, who have decided to push for strict new federal regulations on cigarettes and tobacco products.

The President and the FDA Commissioner also have forgotten, or choose to ignore, that our Constitution entrusted the responsibility for lawmaking to the Congress.

The Congress repeatedly has asserted its responsibility for tobacco regulation. With the Federal Cigarette Labeling and Advertising Act, Congress set up a comprehensive method to regulate tobacco products. This Act banned tobacco advertising from radio and television and required health warnings on all tobacco products and print advertisements.

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Congress also has shown that it knows how to delegate power to the executive branch when it finds cause to do so. The Surgeon General, the Secretary of Health and Human Services, and the Secretary of Education have all been tasked by Congress with educating our citizens about the risks of tobacco.

But these programs do not go far enough for the anti-tobacco groups and their allies in the Administration and Congress. They want to see tobacco products regulated out of existence, and they know that giving the FDA jurisdiction over tobacco would be just the ticket to do this.

What the President and the FDA are not telling us is that the natural and inevitable result of FDA jurisdiction over tobacco is the outright prohibition of all tobacco products. This is because the FDA is required by law to certify that the products it regulates are "safe and effective." The FDA Commissioner has stated publicly that he could never make such a finding with respect to cigarettes.

Once the FDA has jurisdiction over tobacco, it is only a matter of time before some anti-smoking group sues the FDA for allowing an unsafe product on the market. Prior to this eventuality, under the President's scheme, the bureaucrats at the FDA would have the power to tell us what kind of billboards we can read and what kinds of T-shirts and caps we are permitted to wear -- all this when there is no convincing evidence that advertising influences a

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person's decision to smoke. These advertising restrictions would only serve to impede the ability of tobacco companies to enhance the brand loyalty of their adult customers and compete for the business of other adult smokers. These restrictions are just the type of needless and intrusive federal regulation that the voters asked their representatives to eliminate.

We all want to protect children, but good intentions do not necessarily make for good regulations.

It is not hard for most Americans to figure out that the FDA's plan makes no sense. But then again, most Americans do not share the President's unshakable belief that there is a federal regulatory solution to every social problem this country faces.

To make matters worse, the FDA's proposal ignores a solution to the problem of underage smoking that is already in place. The Congress passed a law in 1992 providing incentives for the states to enact and enforce laws prohibiting sales of tobacco products to minors. Every state has now passed such a law and many are making significant strides towards better enforcement.

The principal obstacle to further progress, according to a report by the Inspector General of the Department of Health and Human Services issued in April of this year, is that HHS has failed to issue final regulations and guidance to the states to help them

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comply with the terms of this law.

Why did the Administration ignore this avenue for addressing the problem of underage smoking? Perhaps it was because the President and his advisors are ideologically incapable of embracing a state and local solution when they have a chance to expand the federal bureaucracy. Or perhaps it was because the President, who is running for reelection, somehow thought he could take political credit for a new anti-smoking initiative, but not for the implementation of a preexisting law.

Whatever the reason, the President has managed to propose bad policy at the same time as shooting himself and the rest of his party in the foot politically. The President keeps looking for ways to redefine himself with the electorate, but he hasn't yet absorbed the lesson of the last election -- Americans want a slimmed down, sensible federal government.

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